



November 7, 2002

Sheriff Dennis Wilson  
Limestone County  
Sheriff's Office  
1221 East Yeagua  
Groesbeck, Texas 76642

OR2002-6353

Dear Sheriff Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171925.

The Limestone County Sheriff's Office (the "sheriff's office") received a request for the felony and misdemeanor records of two named individuals for a specified time period. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

We initially address your assertion that the request is phrased as a question rather than as a request for actual records. The Public Information Act (the "Act") does not require a governmental body to prepare answers to questions or to do legal research. *See* Open Records Decision Nos. 563 at 8 (1990), 555 (1990). However, a governmental body must make a good faith effort to relate a request to information that it holds. Open Records Decision No. 561 (1990). Here, the requestor has not phrased his request in the form of a question. Rather, he has asked for specific information, namely, the felony or misdemeanor records of two individuals dating from a specific time period.

We now consider your obligations under the Act in relation to the request at issue. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the

specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office copies or representative samples of the specific information that was requested.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App. - Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because you have not submitted the information, we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court as identified below.

Finally, we address your question as to whether the sheriff's office is required to request an open records ruling each time it receives a request for criminal history information. Section 552.301 provides in part:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

Gov't. Code § 552.301 (emphasis added). There are only two instances in which a previous determination exists. Open Records Decision No. 673 at 6 (2001). The first is where, assuming the law, the facts, and the circumstances in which the ruling was based have not changed, the information at issue is precisely the same information as was addressed in the prior attorney general ruling, the ruling is addressed to the same governmental body, and the ruling concludes that the information is or is not subject to disclosure. *Id.* The second is where the information at issue falls within a specific, clearly delineated category of information, the previous decision concludes that the specific, clearly delineated category of information is or is not excepted from disclosure under the Act, and the previous decision explicitly provides that the governmental body or bodies to which the decision applies may withhold the information without the necessity of again seeking a decision from this office. *Id.* at 7. Thus, unless one of the two instances exist in which a previous determination has been granted, the sheriff's office must always request an opinion from this office before it may withhold information requested under the Act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Maverick F. Fisher". The signature is fluid and cursive, with the first name "Maverick" being more prominent and the last name "Fisher" written in a smaller, more compact script.

Maverick F. Fisher  
Assistant Attorney General  
Open Records Division

MFF/seg

Ref: ID# 171925

c: Mr. Sam R. Richey  
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